

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

HOWARD MITCHELL,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

Case No. SUSP-99-0034

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held in Room 250 of the South Campus Center on the campus of the University of Washington in Seattle, Washington, on November 1, 2000.

1.2 Appearances. Appellant Howard Mitchell was present and represented himself *pro se*. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 Nature of Appeal. Appellant was given a three-day suspension for verbally harassing a co-worker. Respondent alleged that Appellant demonstrated unacceptable behavior and caused a severe morale problem among his coworkers.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

II. FINDINGS OF FACT

2.1 Appellant Howard Mitchell is a Pharmacy Assistant 2 and a permanent employee of Respondent University of Washington (UW). Appellant and Respondent are subject to Chapters

1 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant
2 filed a timely appeal with the Personnel Appeals Board on October 13, 1999.

3 2.2 On August 16, 1999, Appellant was employed in the Outpatient Pharmacy of Harborview
4 Medical Center. He was responsible for performing a variety of technical pharmaceutical tasks
5 involving interaction with patients, providers, and coworkers. Appellant's tasks included dispensing
6 medications under the supervision of a pharmacist, inputting information into the computer and
7 printing medication labels.

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9 2.3 On August 16, 1999, Appellant was inputting prescription information into the computer
10 while his co-worker, Yvette Hillerman, was retrieving drugs from the shelves to fill prescriptions.

11 2.4 One of the prescriptions was for acyclovir, a medication used to treat genital herpes.
12 Appellant commented to Ms. Hillerman that the dose prescribed seemed like a big dose. Ms.
13 Hillerman commented that it was the normal dose as far as she knew.

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15 2.5 As their conversation continued, Appellant made a comment regarding Ms. Hillerman's
16 knowledge of the drug. Ms. Hillerman ignored his comment. Then Appellant inquired if her
17 knowledge came from personal use. Ms. Hillerman told Appellant that he just did not know when
18 to stop and Appellant commented that he would not have said anything if he had known that she
19 was infected. Ms. Hillerman commented to Appellant that he just did not get it and Appellant
20 agreed.

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22 2.6 Appellant did not intend his comments to cause harm to Ms. Hillerman. Rather, he meant
23 his comments to be a joke.

1 2.7 Pharmacist Ann Nguyen overheard the end of the exchange between Ms. Hillerman and
2 Appellant. She confirmed that Ms. Hillerman was upset, raised her voice, and said something to the
3 effect of, "You just don't get it, do you Mitch. You just don't know when to stop."

4 2.8 Ms. Hillerman found Appellant's comment offensive. She reported the conversation to the
5 lead pharmacist and asked that she be allowed to work in another part of the pharmacy for the rest
6 of the day.

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8 2.9 The next day, Ms. Hillerman spoke to Cindy Brennen, Assistant Director of the Pharmacy,
9 and Cindy Walters, supervisor of the Outpatient Pharmacy. She described two interactions she had
10 with Appellant, the one on August 16 and one that occurred about two weeks after she began
11 working in the pharmacy in May 1999. In the first incident, Ms. Hillerman told Appellant how his
12 annoying, childish comments affected her and told him that she would not tolerate subtle or overt
13 verbal abuse. Following this discussion, she and Appellant continued to work together without
14 further incident until the August 16 incident.

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16 2.10 Following her discussion with Ms. Hillerman, Ms. Walters drafted a memorandum to Tomi
17 Hadfield, Chief Operating Officer, in which she recommended that Appellant be given a three-day
18 suspension for his inappropriate behavior. Ms. Brennen reviewed the document and concurred with
19 the recommendation.

20 2.11 Ms. Brennen determined that Ms. Hillerman was credible, that she was genuinely hurt by
21 Appellant's comments, that Appellant's comments were inappropriate and offensive, and that his
22 actions constituted verbal harassment. Ms. Brennen acknowledges that there is a lot of kidding and
23 joking that occurs in the work place, but she concluded that Appellant's actions went beyond what is
24 acceptable. Although Ms. Brennen could not recall any prior complaints from staff about Appellant
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1 engaging in this type of behavior, in this instance, she concluded that Appellant needed to be given
2 a strong statement that verbal harassment was unacceptable.

3 2.12 Ms. Hadfield concurred with the recommendation that Appellant be given a three-day
4 suspension. By letter dated September 8, 1999, Ms. Hadfield informed Appellant of his suspension
5 for the reason of verbal harassment of coworkers.
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7 **III. ARGUMENTS OF THE PARTIES**

8 3.1 Respondent argues that it is undisputed that Appellant and Ms. Hillerman had a discussion
9 about the medication, that Ms. Hillerman was upset, and that the conversation was harassing in
10 nature. Respondent contends that there is no reason to doubt Ms. Hillerman and that the sanction
11 given to Appellant is very mild in light of the hurt that Ms. Hillerman experienced. Respondent
12 asserts that there is no excuse for joking that goes too far, that Appellant's comments went too far,
13 and that he must be given a message that he cannot hurt his coworkers with so-called jokes.
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15 3.2 Appellant argues that the allegations are false, that Respondent engaged in a "witch hunt,"
16 and that Respondent is singling him out in an effort to discredit his character and to get rid of him.
17 Appellant contends that he is innocent, that he has no prior complaints against him, that the
18 University did not ask him about his version of the incident, and that the University blew this
19 incident out of proportion. Appellant asserts that he is concerned about how people feel and would
20 not say anything malicious or with the intent of causing emotional harm or distress.

21 **IV. CONCLUSIONS OF LAW**

22 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
23 herein.
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25 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
26 the charges upon which the action was initiated by proving by a preponderance of the credible

1 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
2 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
3 Corrections, PAB No. D82-084 (1983).

4 4.3 Respondent has proven by a preponderance of the credible evidence that Appellant engaged
5 in an interaction with Ms. Hillerman that constituted verbal harassment.
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7 4.4 Under the proven facts and circumstances of this case, Respondent met its burden of proof
8 that a three-day suspension is warranted. The appeal should be denied.
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10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Howard Mitchell is denied.

12 DATED this _____ day of _____ 2000.

13 WASHINGTON STATE PERSONNEL APPEALS BOARD
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15 _____
16 Walter T. Hubbard, Chair

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18 Gerald L. Morgen, Vice Chair

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20 Leana D. Lamb, Member
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